Filed 5/5/10 In re Joseph P. CA1/4
Received 5/5/10; not posted due to clerical error

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re JOSEPH P., a Person Coming Under the Juvenile Court Law.	
HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. C.J., Defendant and Appellant.	A125024 (Humboldt County Super. Ct. No. JV070154)

The juvenile court concluded that appellant C.J. was an alleged father—not a presumed father—of minor Joseph P. It did not order reunification services for him, denied his petition for modification seeking presumed father status, and terminated his parental rights. On appeal,[1] C.J. contends that a paternity determination in a family support proceeding constitutes an adjudication that he was Joseph P.'s legal parent, entitling him to all the rights of a presumed father in a juvenile dependency proceeding. We affirm the juvenile court orders.

[1] C.J. filed a timely notice of appeal from the May 2009 orders denying his petition for modification, terminating his parental rights and selecting a permanent plan of adoption for Joseph. An amended notice of appeal filed in July 2009 specifically adds the juvenile court's denial of C.J.'s motion for a directed verdict on the issue of his alleged father status as one of the underlying orders being challenged.

I. FACTS

A. *Family History*

In January 2005, minor Joseph P. was born to mother G.P. His birth certificate did not name a father. Appellant C.J. was present at the birth. G.P. told C.J. that he was the father and he admitted that he was. After Joseph was born, C.J. lived at G.P.'s home off and on for four months. When the minor was three weeks old, G.P. brought him to meet C.J.'s wife and children.[2] Once, G.P. left Joseph with C.J. and his wife for two hours. They sought many more such visits, but G.P. did not permit them.

By the summer of 2005, C.J. and his wife moved back to Idaho for a short time. C.J. soon returned to California without his wife. He lived with an aunt in McKinleyville for a time. He spent eight or nine months in Humboldt County jail. On his release from jail in April 2006, he lived with G.P. and Joseph until October 2006. He lived in Idaho with his wife from October through December 2006.

C.J. returned to California in January 2007, where he was arrested and jailed until April 2007. On his release, he lived with G.P. for about a month before moving back to Idaho to live with his wife. In August 2007, C.J. was returned from Idaho to Humboldt County on an outstanding warrant. He served a jail term for carrying a concealed weapon and possession of approximately $20 worth of methamphetamine.

B. *Family Support Action*

Meanwhile, G.P. sought financial assistance from Humboldt County authorities. As part of this process, she filed a declaration of paternity stating that C.J. was Joseph's father. In December 2005, C.J. was served with notice of her family support action at the county courthouse. (Fam. Code,[3] § 17404.) In February 2006, Humboldt County Department of Child Support Services obtained a default judgment finding that C.J. was legally obligated to pay support for Joseph, although no dollar amount of support was ordered to be paid. (§ 17430, subd. (a).)

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[2] C.J. testified that his other children had seen Joseph six times in his life.

[3] All statutory references are to the Family Code unless otherwise indicated.

C. *Dependency Action*

In February 2007, G.P. gave birth to another child, a daughter. In July 2007, the infant died as a result of suspected child abuse. Joseph was detained and placed with a member of his extended family. Respondent Humboldt County Department of Health and Human Services (department) filed a petition on Joseph's behalf, alleging that G.P. had failed to protect his sibling from harm.[4] (Welf. & Inst. Code, § 300, subd. (j).)

The petition named two alleged fathers—one of whom was a man identified only as "Keenan," whose address was unknown. The department was unable to locate this alleged father without a complete name. By August 2007, the department learned that "Keenan" was C.J. His address was still unknown, although he was thought to be living in Idaho.[5]

In January 2008, the department filed a first amended petition on behalf of Joseph, naming C.J. as his alleged father. His whereabouts were still listed as unknown. Department officials did not know of any judicial declaration of Joseph's parentage. The key allegation of sibling abuse was reworded, and G.P. submitted the jurisdictional issues in the petition on the basis of the department reports. The juvenile court sustained the allegations of the first amended petition and found Joseph to be a dependent child. By February 2008, Joseph had been placed in a local foster home and an absent parent search for C.J. had been initiated.

In March 2008, C.J. was located in Humboldt County jail. He first learned of Joseph's dependency proceeding at that time. He told the department that he would like Joseph to be placed with him in Idaho. Counsel was appointed to represent him. The juvenile court advised C.J. that Joseph was already under its jurisdiction.

C.J. filed a statement that he believed that he was Joseph's father. He asked the juvenile court to enter a judgment of parentage and to find that he was the presumed

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[4] G.P. had two other minor daughters. We include facts about Joseph's siblings to the extent that they bear on his case.

[5] Later, C.J. would advise the juvenile court that G.P. was in contact with his mother in Idaho, but had failed to disclose her whereabouts to the department.

father of the minor. He stated that he had lived near Joseph for about two years, but admitted that he had not lived with the minor. C.J. told various members of his family and G.P.'s family that Joseph was his son. He had offered G.P.'s mother financial assistance, but was told that none was needed.

After a April 2008 dispositional hearing, the juvenile court found that Joseph's continued removal from G.P. was required, based on the finding of sibling abuse. The department was ordered to provide continued reunification services to mother. By this time, the date for a six-month review had passed, so a 12-month review hearing was set for September 2008. An order advised C.J. that he had been determined to be an alleged father and, as such, would be denied reunification services. Later that month, Joseph was moved to a new foster family.

In April 2008, C.J. sought paternity testing, but abandoned his request when he learned that he would be required to join the family support department in the juvenile dependency proceedings. In June 2008, he also sought visitation with Joseph. He was advised to write letters to Joseph, to be sent through the department.[6] Once paternity was established, the department was willing to discuss the possibility of in-person visitation.[7] Through counsel, C.J. advised the juvenile court of his intention to seek presumed father status.

C.J. was released from jail in May or June 2008. He stayed in the area for a few months living with his aunt, to complete a probation term. By August, he had returned to live with his wife in Idaho.

In September 2008, the department's 12-month review hearing report identified C.J. as an alleged father. The department recommended terminating G.P.'s reunification services and setting a date for a permanency planning hearing. In September and October 2008, a contested 12-month review hearing was conducted. The juvenile court found that returning Joseph to G.P.'s custody would create a substantial risk of detriment to him. In

[6] As of September 2008, C.J. had not written any letters to Joseph.

[7] When a visit with Joseph was arranged in the winter of 2009, the four-year-old did not recognize C.J., whom he had not seen since December 2007.

October 2008, the juvenile court terminated G.P.'s reunification services and set a March 2009 date for a permanency planning hearing.[8] (See Welf. & Inst. Code, § 366.26.)

In November 2008, G.P. sought to have Joseph removed from his foster home and placed with her sister. The foster mother petitioned for de facto parent status.[9]

In January 2009, C.J. obtained a court order for DNA testing, without joinder of the Department of Child Support Services. When his counsel contacted the family support office, she was advised that a judgment of paternity already existed. County counsel provided C.J. with a copy of the February 2006 family support judgment. This copy—certified in July 2007—had been found in the county counsel's file on one of Joseph's siblings. C.J.'s counsel also contacted the family support office, seeking information about the judgment and the notice given of it.

Later in January 2009, C.J.'s counsel reported to the juvenile court that her client had been deemed to be Joseph's father in the February 2006 family support matter.[10] On the basis of the family support judgment, the department declined to perform the court-ordered DNA test. In February 2009, the juvenile court ordered that C.J.'s counsel be provided with all county counsel's records relevant to the paternity issue. In March 2009, counsel for C.J. attempted to obtain those records from the family support office without the need to resort to a subpoena. The family support office maintained that these documents were confidential.

Meanwhile, back in January 2009, C.J. filed a petition for modification, seeking a determination that he was Joseph's natural, presumed and legal father; asking for reunification services; and praying for a court order placing the minor in his custody. His counsel argued that because the department knew of the paternity determination that was

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[8] In January 2009, we rejected G.P.'s challenges to the juvenile court's findings that reasonable reunification services had been provided to her and that there was a substantial risk of detriment to Joseph if he was returned to her custody. (See *G.P. v. Superior Court* (Jan. 29, 2009, A123358) [nonpub. opn.].)

[9] The juvenile court granted this motion in April 2009.

[10] At the subsequent hearing, the juvenile court took judicial notice of the case file in the family support matter.

part of the family support judgment by July 2007, C.J. should have been granted presumed father status in 2008 and offered reunification services. The juvenile court agreed to conduct a hearing on the request.

G.P. opposed the petition, arguing inter alia that the fact that C.J. was Joseph's biological father did not entitle him to presumed father status. The department also opposed the petition, the request for reunification services and the request to place Joseph with C.J.

In April 2009, C.J.'s counsel filed a declaration in support of a request for county records.[11] She stated that the family support judgment was not referenced in Joseph's juvenile dependency file. She stated that the file contained no evidence of efforts to locate her client until he was incarcerated in the spring of 2008. C.J. sought information about the extent to which the family support office had evidence of his whereabouts during the pendency of the juvenile dependency proceeding, and evidence of the department's attempts to access the family support office's information.

The juvenile court took evidence on these matters during hearings conducted in April and May 2009. The parties stipulated that C.J. was Joseph's biological father. C.J. told the juvenile court that when Joseph was born, no one asked him to sign a document naming him as the child's father. He believed that it was in Joseph's best interests to be placed with him, because he was the biological father.

C.J. argued that the department had failed to provide him with due process because its earlier search for him was inadequate. He sought to begin the dependency proceedings anew, in order to obtain reunification services. The department urged the juvenile court not to place Joseph with C.J., regardless of its determination of his parental status. It argued that this placement would be detrimental to the minor, citing his lack of contact with C.J. The report also noted C.J.'s 2005 guilty pleas to various alcohol, controlled substance, firearms and driving offenses. C.J. admitted violating the terms of his probation.

[11] C.J. later dropped the request to subpoena records when the department was given access to the evidence that he sought.

On May 4, 2009, the juvenile court denied C.J.'s request to be declared Joseph's presumed father. Assuming arguendo that C.J. could establish presumed father status, the juvenile court concluded that it would not be in Joseph's best interests to be placed in C.J.'s custody. C.J. was not allowed to participate in subsequent proceedings relating to placement of the minor.

On May 19, 2009, the juvenile court heard C.J.'s argument that he should be afforded legal father status, which he asserted was greater than presumed father status. The juvenile court declined to characterize C.J. as a legal father. It ruled that C.J. was Joseph's biological father and affirmed its prior determination that he was not a presumed father. At the conclusion of the hearing, the juvenile court terminated C.J.'s parental rights.

II. PRESUMED FATHER STATUS

A. *Issue*

C.J.'s appeal turns on the correctness of the juvenile court's determination that he was not Joseph's presumed father. (§ 7611.) He reasons that a judgment of paternity from a family support proceeding constitutes an adjudication that he is Joseph's legal parent, entitling him to all the rights of a presumed father in juvenile dependency proceedings. He complains that the juvenile court terminated his parental rights, failed to provide him with reunification services, and failed to place Joseph with him despite the lack of a finding of detriment—all in violation of his constitutional and statutory rights as the minor's legal and presumed father. As the question that C.J. poses turns on the construction of a statute, it is a legal issue for us to decide anew on appeal. (*Amdahl Corp. v. County of Santa Clara* (2004) 116 Cal.App.4th 604, 611; *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 753.)

C.J. argues that a finding that he is Joseph's biological father is inherent in the family support judgment and that this paternity determination is binding. In a family support action, an allegation of paternity is a material allegation that must be accepted as true if—as here—C.J. allowed a default judgment to be entered against him. (See *County of Lake v. Palla* (2001) 94 Cal.App.4th 418, 427.) However, no one disputes that C.J. is

Joseph's *biological father* or that the family support judgment establishes that biological link. The issue we must resolve is not whether C.J. has established his paternity, but is whether he is entitled to be awarded the status and rights of a *presumed father* based on that biological link alone.

B. *Is a Biological Father Always a Presumed Father?*

In C.J.'s analysis, once his biological paternity has been established, he is a presumed father. It is true that a Uniform Parentage Act judgment determining the existence of a parent-child relationship is determinative for all purposes. (See § 7636.) However, that judgment establishes that C.J. is the *biological father* of Joseph. C.J. would go further and find that this judgment compels the conclusion that he is Joseph's *presumed father*. He cites no case holding that a paternity judgment alone qualifies a man to be deemed a presumed father.

C.J.'s analysis is inconsistent with dependency law. The juvenile dependency system recognizes several different classes of fathers. Among these are alleged fathers, natural fathers, and presumed fathers. An alleged father is one who may be the father of a dependent child, but who has not established that he is the child's natural or presumed father. (*In re E.O.* (2010) 182 Cal.App.4th 722, 726 [petn. for review pending, petn. filed Apr. 12, 2010, S181600]; *In re A.A.* (2003) 114 Cal.App.4th 771, 779; *In re Jerry P.* (2002) 95 Cal.App.4th 793, 801-802.) The juvenile court found that C.J. was Joseph's alleged father.

A natural father is one who has been established as the biological father of the child. (*In re E.O., supra*, 182 Cal.App.4th at p. 726; *In re A.A., supra*, 114 Cal.App.4th at p. 779; *In re Jerry P., supra*, 95 Cal.App.4th at pp. 801-802.) The family support judgment establishes that C.J. is Joseph's biological father—e.g., his natural father. (See *County of Lake v. Palla, supra*, 94 Cal.App.4th at p. 427.) This judgment is determinative of the issue of biological paternity. (§ 7636.)

However, case law makes it clear that once biological paternity has been established, a man has not necessarily achieved presumed father status. Presumed father status turns on relationship, not biology. A presumed father is a man who comes forward

promptly and demonstrates a full commitment to his paternal responsibilities to provide emotional, financial, and other support to a child. (*In re E.O., supra,* 182 Cal.App.4th at p. 726; *In re A.A., supra,* 114 Cal.App.4th at p. 779; *In re Jerry P., supra,* 95 Cal.App.4th at pp. 801-802.) When determining whether a biological father demonstrates this commitment, we consider his conduct before and after the child's birth, including his willingness to assume full custody of the child; any public acknowledgment of paternity; his payment of pregnancy and birth expenses; and his prompt legal action to seek custody of the child. (*In re Julia U.* (1998) 64 Cal.App.4th 532, 541.) Thus, it can fairly be said that presumed father status is *earned* by a man's commitment to developing a substantial familial relationship with the child. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1654-1655; see *In re Nicholas H.* (2002) 28 Cal.4th 56, 65.) C.J. was required to establish his presumed father status by a preponderance of evidence. (See *In re Spencer W., supra,* 48 Cal.App.4th at pp. 1654-1655.)

These categories are important, because only a " 'statutorily presumed father' " has a right to reunification services and to be awarded custody of a dependent child. (*In re Jerry P., supra,* 95 Cal.App.4th at p. 801; see *In re E.O., supra,* 182 Cal.App.4th at p. 726; see also Welf. & Inst. Code, § 361.5, subd. (a)[12] [juvenile court *may* order reunification services for mere biological father]; § 3010, subd. (a) [§ 7611 presumed father entitled to custody, while natural father is not]; *In re Zacharia D.* (1993) 6 Cal.4th 435, 451 [prior law]; *Gabriel P. v. Suedi D.* (2006) 141 Cal.App.4th 850, 857 [custody].) Thus, a presumed father has more rights in a juvenile dependency proceeding than a biological or natural father. (*In re Zacharia D., supra,* 6 Cal.4th at pp. 448-449; *In re*

[12] C.J. rejects our interpretation of the term "statutorily presumed father" in this statute, asking us to take judicial notice of legislative history that he asserts would prove that his different interpretation is correct. As we find this language to be unambiguous, there is no need for extrinsic evidence to interpret the plain meaning of this statutory term. (*California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294, 308; see *In re Dannenberg* (2005) 34 Cal.4th 1061, 1081.) Thus, we deny the request for judicial notice.

A.A., supra, 114 Cal.App.4th at p. 779; see *Robert J. v. Leslie M.* (1997) 51 Cal.App.4th 1642, 1644-1646 [no standing for legal but not presumed father].)

In order to become a presumed father, a man *must* fall within one of the criteria set forth in section 7611. (*In re E.O.*, *supra*, 182 Cal.App.4th at p. 727; *In re Vincent M.* (2008) 161 Cal.App.4th 943, 954 & fn. 11; *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 595; *In re Zacharia D., supra*, 6 Cal.4th at p. 449.) A prior paternity judgment is not one of those criteria. Notably, section 7611 does not incorporate statutory provisions on the use of blood tests to establish paternity when delineating the many ways in which a man may establish that he is a child's presumed father. (§ 7611; see §§ 7550-7558.) This omission is significant because the two other statutory means of establishing a presumption of paternity set out in the Family Code *are* incorporated into section 7611. Clearly, the omission was intended. (See *Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 280.)

C.J.'s argument misconstrues the nature of the support judgment. The 2006 default judgment is a judicial determination of paternity providing the foundation for a support order. By contrast, presumed father status is concerned with whether a man has promptly come forward and demonstrated a commitment to his parental responsibilities. (*In re E.O., supra,* 182 Cal.App.4th at pp. 727-728; *In re Jerry P., supra,* 95 Cal.App.4th at pp. 801-802.) It would be absurd to conclude that a paternity judgment focusing narrowly on biological and financial issues is determinative of issues unrelated to that determination and far beyond its scope. We reject the invitation to read the applicable statutes in an absurd manner. (*In re E.O.*, *supra*, 182 Cal.App.4th at p. 728; *In re M.B.* (2009) 174 Cal.App.4th 1472, 1477.) Thus, we conclude that a paternity judgment is not sufficient—by itself—to support a finding of presumed father status in a juvenile dependency proceeding.

C. *Is C.J. a Presumed Father?*

By rejecting C.J.'s request to be awarded the rights of a presumed father, the juvenile court necessarily concluded that he did not establish his presumed father status

by a preponderance of evidence. (See *In re Spencer W., supra,* 48 Cal.App.4th at pp. 1654-1655.) On appeal, we must determine whether C.J. provided sufficient additional evidence—beyond the 2006 default judgment of paternity—to support a finding that he is a presumed father.

In order to be deemed a presumed father, a man must meet one of the criteria set out in section 7611.[13] (*In re E.O., supra,* 182 Cal.App.4th at pp. 726-727; *In re Vincent M., supra,* 161 Cal.App.4th at p. 954 & fn. 11; *Francisco G. v. Superior Court, supra,* 91 Cal.App.4th at p. 595; see *In re Zacharia D., supra,* 6 Cal.4th at p. 449.) Most of these unambiguous[14] criteria require some form of actual or attempted marriage to the mother, a deceased father, or a child living outside the United States—circumstances that are not present in this case. (See §§ 7540-7541, 7611, subds. (a)-(c), (e)-(f).) We examine the two remaining methods of establishing presumed father status to determine if C.J. met those criteria.

A man may establish his presumed father status by signing a voluntary declaration of paternity at the time of the child's birth. (§§ 7570-7577, 7611.) Hospital officials

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[13] A man is presumed to be the natural father of a child (1) if he meets the conditions set out in sections 7540 and 7541 (child of wife cohabitating with husband); (2) if he meets the conditions set out in sections 7570 through 7577 (establishment of paternity by voluntary declaration); (3) if he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated or a judgment of separation is entered; (4) if before the child's birth, he and the child's natural mother attempted to marry each other, although the marriage was later declared invalid and the child was born within a certain time; (5) if after the child's birth, he and the child's natural mother married or attempted to marry each other, although that marriage is or could be declared invalid, if he also agreed that he could be named the child's father on the child's birth certificate or he is obligated to pay child support by written promise or court order; (6) if he received the child into his home and openly held out the child as his natural child; or (7) if the child is in utero after the death of the decedent and the conditions set forth in Probate Code section 249.5 are satisfied. (§ 7611.)

[14] C.J. asks us to take judicial notice of the legislative history leading to the enactment of the predecessor statute to section 7611 in 1975. In December 2009, we granted this request, but left a determination of the relevance of the submitted materials to a later date. As we find no ambiguity in the statute, we need not consider any extrinsic evidence. Thus, we disregard the submitted materials.

were required to offer to C.J.—who was present at Joseph's birth—an opportunity to sign such a declaration.[15] (§ 7571.) C.J. did not make this public acknowledgement of paternity at the time that Joseph was born. His failure to sign this voluntary declaration of paternity precludes him from this means of establishing his presumed father status.

C.J. could also establish presumed father status applies if he received the child into *his* home and *openly* held out the child as his own. (§ 7611, subd. (d); see *In re Zacharia D., supra,* 6 Cal.4th at p. 449; *In re E.O., supra,* 182 Cal.App.4th at p. 727; see also *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 825-830 [actual receipt into home required].) A review of the evidence satisfies us that the juvenile court correctly found that C.J. has not established that he was Joseph's presumed father on this basis. C.J. admitted that he has not lived with the child. He lived with G.P. off and on during Joseph's life, in *her* home. Joseph has never lived with C.J., his wife and his family in *his* Idaho home. C.J. did not openly hold out Joseph to be his natural child. He acknowledged privately to his wife and other family members that he was Joseph's father, but he did not sign a public acknowledgement of paternity.

In other ways, C.J. failed to come forward promptly and demonstrate a full commitment to his paternal responsibilities. He did not pay for prenatal care or the hospital costs related to the child's birth, nor did he contribute to Joseph's support. When served with a family support action, he failed to appear at the hearing. He did not seek custody of the minor or offer to support him at that time. He did not communicate with Joseph, despite the department's willingness to assist him in doing so. He provided little in the way of emotional, financial, or other support to Joseph. (See *In re E.O., supra,* 182 Cal.App.4th at p. 726; *In re A.A., supra,* 114 Cal.App.4th at p. 779; *In re Jerry P., supra,* 95 Cal.App.4th at pp. 801-802.) As C.J. did not establish that he came within any of the categories set forth in section 7611, the trial court had no authority to find that he was a presumed father. (See *In re E.O., supra,* 182 Cal.App.4th at p. 727.)

[15] C.J. did not recall being offered this opportunity. However, we presume that official duties are regularly performed. (Evid. Code, § 664.)

D. *Conclusion*

C.J.'s status is that of a biological father. A biological father's desire to establish a relationship with a child, without more, is not a fundamental liberty interest protected by the due process clause. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 933; see *Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, 942.) Parental rights do not spring from the mere biological connection between a parent and a child. Such rights require a more enduring relationship. (*In re Jason J., supra,* 175 Cal.App.4th at p. 933.) Section 7611 identifies the situations in which a relationship warrants parental rights. C.J. has not established anything more than his biological link to Joseph. The trial court properly denied C.J.'s request to be declared to be a presumed father.[16] (See *In re Spencer W., supra,* 48 Cal.App.4th at p. 1655.)[17]

The juvenile court orders are affirmed.

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Reardon, Acting P.J.

We concur:

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Sepulveda, J.

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Rivera, J.

[16] This issue arises in the related habeas corpus or alternative writ of mandate petition, too, which we resolve by separate order. (No. A126637.)

[17] In light of this finding, we need not address the other issues that C.J. raises in his appeal.